

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
Plaintiff,) 15cr268 (BMC)
V.) United States Courthouse
Brooklyn, New York
MUHANAD MAHMOUD AL FAREKH,) SEPTEMBER 28, 2015
Defendant.)
_____)

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE BRIAN COGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: KELLY T. CURRIE
Acting United States Attorney
BY: ZAINAB AHMAD
DOUG PRAVDA
Assistant United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

FOR THE DEFENDANT: LAW OFFICE OF SEAN M. MAHER, PLLC
BY: SEAN M. MAHER, ESQ.
233 Broadway, Suite 801
New York, New York 10279

THE COURT REPORTER: NICOLE CANALES, RPR, CSR
225 Cadman Plaza East
Brooklyn, New York 11201
cnlsnic@aol.com

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1 THE CLERK: United States versus AL Farekh, Docket
2 Number 15cr268. Counsel, please state your appearances,
3 starting with the government.

4 MS. AHMAD: Good morning, your Honor. Zainab Ahmad
5 and Douglas Pravda for the United States, and we're joined at
6 counsel table by Special Agent Marion Marcel of the FBI.

7 THE COURT: Good morning.

8 MR. MAHER: Good morning, your Honor. Sean Maher
9 for Mr. AL Farekh, who is present in court.

10 THE COURT: Good morning.

11 Good morning, Mr. AL Farekh.

12 THE DEFENDANT: Good morning.

13 THE COURT: Okay. Tell me where are we?

14 MS. AHMAD: So I think one of the things that we had
15 planned to reconvene about today was the defendant's intended
16 motion to lift the special administrative measures, and I'll
17 let defense counsel give an update as to the timeline on that.
18 Nothing has been filed thus far.

19 THE COURT: I'm aware.

20 MS. AHMAD: And our update for the Court, from the
21 government's side, is that our unclassified discovery with
22 respect to the currently pending charges is largely complete.
23 As we are going through the process we previously described
24 for the Court of reviewing classified information and seeking
25 to declassify some of it, we're now in a position to tell

1 the Court that we believe that we will be adding additional
2 charges; certainly, including conspiracy to murder and perhaps
3 a substantive murder count, although we're not certain about
4 that fact yet, based on recently declassified evidence of the
5 defendant's involvement in planting the vehicle born,
6 improvised explosive device outside the US base in
7 Afghanistan.

8 We let defense counsel know and have given him as
9 much information as we can, at this point, about the evidence
10 and about what we expect the additional charges will be.
11 We're hopeful we'll be in a position to bring those additional
12 charges within the next two to three months. And so what we
13 have discussed between ourselves is that given that the
14 Sams (phonetic) litigation will take, probably, the next
15 couple months to get fully briefed, and the fact that we'll be
16 adding charges, hopefully, within that same time period, it
17 may make sense for us to reconvene in about sixty days.

18 THE COURT: Anything to add to that, Mr. Maher?

19 MR. MAHER: No, your Honor. I'd hope to have my
20 Sams submission done by today, just I was unable to. I'm
21 hopeful to have it to the Court within a week to ten days;
22 that's what I'm endeavoring to do right now.

23 THE COURT: When is the government going to respond
24 to that once it's filed?

25 MS. AHMAD: We'd like to take a look at it before we

1 can give a firm estimate, but I think it would probably be
2 within two to three weeks. And that's again based on what --
3 I understand thus far that defense counsel doesn't intend to
4 include an examination -- a psychological or expert evaluation
5 of his client. If that changes, then the government may well
6 seek to do its own evaluation, which would extend that
7 timeline. But given my sense of what the motion will contain
8 right now, I'd say about two to three weeks, and we can put in
9 a letter advising the Court more specifically within a couple
10 of days of getting and reviewing the motion.

11 THE COURT: Do that. I won't set a responsive date
12 right now. How long did you want to the next conference?
13 Ninety days?

14 MS. AHMAD: We talked about 60 days. We discussed
15 with your deputy November 29th.

16 THE CLERK: November 30th.

17 THE COURT: November 30th at 9:30. The timetable
18 for superseding?

19 MS. AHMAD: We're hopeful that we'll be able to
20 supersede within two to three months, and we'll do our best to
21 do it within two.

22 THE COURT: Let me put it this way, if on
23 November 30th you haven't superceded, and you are quite sure
24 you're going to within 30 days after that, let me know in
25 advance of November 30th. Let me know if the defendant will

1 consent to adjourn the conference until then, because until we
2 get the superseding indictment, obviously we can't make all
3 the progress that we need to.

4 MS. AHMAD: We will, your Honor.

5 THE COURT: I previously designated the case as
6 complex, so I will exclude time on that basis until
7 November 30th. Anything else?

8 MR. MAHER: Just one moment, Judge.

9 (Counsel confers with defendant.)

10 MR. MAHER: Thank you, Judge.

11 THE COURT: All right. We are adjourned.

12 (Proceedings adjourned.)

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